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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,462	06/11/2001	Joseph M. Lindacher	9346	2681

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EXAMINER

WALSH, DANIEL I

ART UNIT	PAPER NUMBER
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2876

DATE MAILED: 02/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/878,462

Applicant(s)

LINDACHER, JOSEPH M.

Examiner

Daniel I Walsh

Art Unit

2876

AW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 10 and 14 is/are rejected.
- 7) ☒ Claim(s) 4-9, 11-13 and 15 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5. 6) ☐ Other: .

DETAILED ACTION

1. Receipt is acknowledged of the Information Disclosure Statement received on 11 June 2001.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-3, 10, and 14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 9, and 12 of U.S. Patent No. 6,454,169 (hereinafter '169). Although the conflicting claims are not identical, they are not patentably distinct from each other because the present claimed invention is a broader recitation of the '169 Patent.

For instance, in claim 1 of the present claimed invention and claim 1 of the '169 Patent, the Applicants claim:

- i) "A scanner...laser source... spinner...set of pattern mirrors... a diffractive element... a

reference position photodetector..." (see claim 1), whereas in the '169 Patent, the Applicants claim "A scanner...laser source... spinner...set of pattern mirrors... a diffractive element... a reference position photodetector..." (see claim 1)

For instance, in claim 2 of the present claimed invention and claim 1 of the '169 Patent, the Applicants claim:

i) "...a controller... receiving the reference position signal" (see claim 2), whereas in the '169 Patent, the Applicants claim "A controller for receiving the reference position signal when the spinner is in the reference position and reading the relative position sensor to correlate the sensor reading with the reference position of the spinner" (see claim 1).

For instance, in claim 3 of the present claimed invention and claim 2 of the '169 Patent, the Applicants claim:

i) "... wherein the controller is operative to deactivate the laser source upon receiving the reference position signal" (see claim 1), whereas in the '169 Patent, the Applicants claim "wherein the controller is operative to activate and deactivate the laser source based on the position of the spinner" (see claim 2).

For instance, in claim 10 of the present claimed invention and claim 9 of the '169 Patent, the Applicants claim:

i) A method of scan pattern generation...activating a laser source...reflecting the laser beam...directing the reflected beam to a diffractive element...deactivating the laser source...

(see claim 10), whereas in the '169 Patent, the Applicants claim "A method of scan pattern generation...activating a laser source... reflecting the laser beam... directing the reflected beam to a diffractive element...deactivating the laser source based on the position of the spinner" (see claim 10).

For instance, in claim 14 of the present claimed invention and claim 12 of the '169 Patent, the Applicants claim:

i) "A method of determining a reference position of a rotating spinner... activating a laser source... reflecting the laser beam... when the spinner is in a reference position..." (see claim 14), whereas in the '169 Patent, the Applicants claim "A method of determining a reference position of a rotating spinner... activating a laser source... reflecting the laser beam... when the spinner is in a reference position..." (see claim 12).

Allowable Subject Matter

3. Claims 4-9, 11-13, and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to teach noting the time at which the reference position photosignal occurs, and that the position of the spinner is based on the speed of the spinner and the time elapsed since the reference position signal was produced.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Blanford et al. (US 6,347,741), Belknap et al. (US 6,651,889), Wike, Jr. et al. (US 5,719,385), Lindacher et al. (US 5,484,990), Rantze et al. (US 6,293,468), Detwiler et al. (US 6,273,337), Detwiler et al. (US 6,273,337), Detwiler et al. (US 6,045,046), Gregerson (US 5,818,025), Andoh et al. (US 5,046,796), Keys et al. (US 6,394,351), and Nakahata (JP02001133715A).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Walsh whose telephone number is (703) 305-1001 or (571) 272-2409 (as of January 15, 2004). The examiner can normally be reached between the hours of 7:30am to 4:00pm Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (703) 305-3503 or (571) 272-2398 (as of January 15, 2004). The fax phone numbers for this Group is (703) 872-9306, (703) 308-7724, or (703) 308-7382.

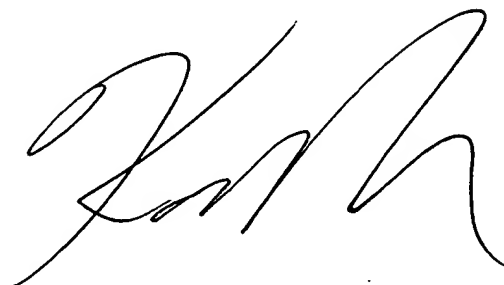
Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to **[daniel.walsh@uspto.gov]**.

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set for the in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.



DW
1/13/04



KARL D. FRECH
PRIMARY EXAMINER